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# Wisconsin Briefs

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## CAMPAIGN FINANCING IN WISCONSIN

In November 2000, voters in 56 of Wisconsin's 72 counties were asked whether they supported campaign finance reform that would limit contributions and expenditures and require complete and timely disclosure. Over 90% of the voters answered "yes" in this referendum, supported by the Wisconsin Counties Association. Throughout the nation, officeholders and voters, regardless of party, are questioning the escalating costs of campaigning and the influence of outside groups.

Part of the problem stems from outdated laws. Regulation of campaign finance has not been substantially revised in almost 30 years at either the state or federal level. During that time, courts have narrowed the application of some restrictions and innovative financing techniques have developed.

Wisconsin candidates have seen the cost of winning elections increase substantially in the last several decades, while state law failed to provide inflationary indexing for contribution and expenditure limits. In that same period, more and more funding organizations have developed outside of the realm of state or federal regulation, making it difficult to control total contributions or require open disclosure of their sources.

### BACKGROUND

**Wisconsin's Early Reforms.** Wisconsin's first attempt to regulate election practices (Chapter 358, Laws of 1897) was passed to stymie the crudest forms of corrupt practices, such as bribery, illegal voting, election fraud, and related corruption. It also required the filing of financial statements that were open to the public.

The current ban on campaign contributions by corporations dates back to 1905 (Chapter 492). They are still prohibited from donating to candidates, political parties, or committees. Labor organizations were similarly barred for a brief period by Chapter 135, Laws of 1935, but this prohibition was repealed by Chapter 429, Laws of 1959.

In 1911, the legislature enacted the "Corrupt Practices Act" (Chapter 650, Laws of 1911), which strengthened and expanded the earlier laws. Central to the act were tightened disclosure provisions. Candidates were required to report all sources of their funding, and they were barred from trading favors, monetary or otherwise, in return for financial support from wealthy donors. The Corrupt Practices Act was widely considered the most sweeping reform of its day, and it was part of the many progressive reforms championed during the 1911 legislative session. It was not until 1925 that the federal government passed its own Corrupt Practices Act, which limited campaign expenditures for federal office and forbade giving or offering money for votes.

**Federal and State Reforms in the 1970s.** Wisconsin reaffirmed its national reputation for clean and fair elections when the 1973 Legislature passed sweeping campaign finance reform

in Chapter 334, Laws of 1973, which created the current statutory “Chapter 11 – Campaign Finance.” The 1973 legislation also created the state Elections Board, with representation from the three branches of government and the major political parties, to administer and enforce both election and campaign finance laws. At the federal level, Congress had passed the Federal Elections Campaign Act of 1971 (FECA), requiring more stringent regulation of disclosure. Following the campaign finance abuses of the 1972 presidential election, Congress amended this law to place limits on contributions from individuals, political parties, and political action committees (PACs) and created the Federal Election Commission to monitor and enforce campaign finance law. Both the state and federal laws imposed restrictions on the amount individuals could contribute directly to candidates, placed limitations on expenditures by campaign organizations, and required disclosure of contributions and expenditures by candidates and their direct contributors.

***Buckley v. Valeo.*** The state and federal reforms of the early 1970s were affected by the landmark *Buckley v. Valeo*, 424 U.S. 1 (1976) decision, in which the U.S. Supreme Court defined what was permissible regulation of campaign contributions and expenditures. The Court found that certain provisions passed by the U.S. Congress and various states to limit campaign contributions and expenditures had violated the First Amendment protections of free speech.

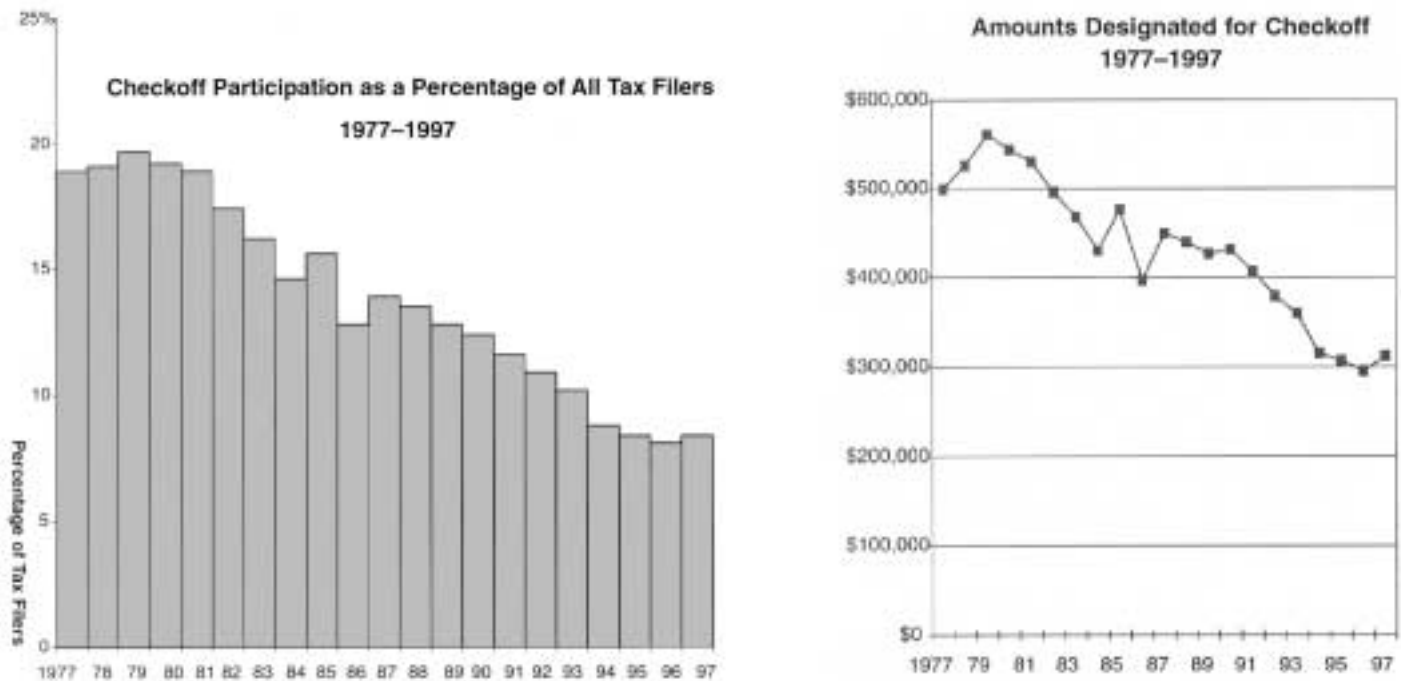
The Court made a clear distinction between contributions and expenditures. In the case of contributions to candidates, it held that reasonable dollar limits did not violate constitutional rights of political expression and association, because excessive contributions could be viewed as buying influence, thus giving the appearance of corruption. It upheld regulation of contributions by individuals, groups, and committees, including PACs and political party committees. The Court also supported reasonable reporting requirements and approved public financing of campaigns.

In dealing with campaign expenditures, the Court did hold, however, that the constitutional provision for freedom of speech permits candidates and their committees to spend as much as they desire (provided they have not agreed to abide by voluntary spending limits in order to receive public campaign funds). It further stated that individuals or groups that act independently of a candidate may spend unlimited amounts of money supporting or criticizing a candidate.

**Wisconsin Election Campaign Fund.** Chapter 107, Laws of 1977, created the Wisconsin Election Campaign Fund as a mechanism for publicly funding campaigns. Candidates running for state office, other than judges of the circuit court and court of appeals, have the option of applying for a grant from the fund. If they accept public funding, they must abide by the statutory spending limits related to the grant. If, however, the candidate’s opponent chooses not to accept public funding, the candidate may receive the grant without being bound by spending limits. The maximum amount a candidate can receive equals 45% of the total spending limit for the particular office. The grant is reduced by the amount of contributions the candidate receives from certain committees, such as PACs.

The fund is publicly financed by Wisconsin taxpayers, who indicate in a checkoff box on their individual income tax returns that \$1 should be transferred from the state’s general fund to the Election Campaign Fund. The designation has no effect on the amount of taxes owed by or the refund due to the taxpayer. (Originally, a taxpayer had to owe a minimum tax of \$1 to participate in the checkoff, but 1985 Wisconsin Act 29 provided any taxfiler may designate a \$1 transfer to the fund, regardless of tax liability.)

Public funding of campaigns has not had the impact its supporters had hoped. It is not widely utilized by candidates, particularly those in highly contested races, in part because grant amounts are relatively low and the related expenditure limits are restrictive. Participation in the check-off option has declined steadily in recent years, as shown in the following chart. In 1977, the first year of the checkoff, 18.9% of taxfilers designated \$1 for the fund, but that figure has dropped to 8.4% in 1997.



Source: Wisconsin State Elections Board, 1997-1998 Biennial Report, June 1999.

## WISCONSIN'S CURRENT CAMPAIGN FINANCE LAWS

Wisconsin regulates campaign finance according to function – contribution or expenditure – with separate dollar limits and reporting requirements.

Contributions are moneys donated directly either to individual candidates or to recognized political committees, with the recipients determining how the money will be spent. Individuals and organizations that contribute to campaigns are required by state and federal laws to report their contributions. The state determines the contribution limits for state or local office, but candidates running for federal office are subject to the limits set by federal campaign finance laws.

Expenditures by candidates from their own personal funds or by individuals and groups acting independently of the candidate cannot be limited because they are considered to be free

expression and are protected by the First Amendment. Laws requiring disclosure of campaign expenditures by independent groups are considered constitutional, however.

## Regulation of Contributions

**Individuals.** States are free to set their own limits on contributions to state candidates. Limitations usually pertain to the type of office and the overall amount a single donor is allowed to contribute to all candidates in a calendar year. In Wisconsin, each individual donor is limited to an aggregate total of \$10,000 per calendar year for all political contributions, whether to state candidates or committees.

**Conduits.** Conduits are groups that contribute to candidates by pooling contributions from individual contributors. The purpose of the conduit is to allow the contributors to identify their related interests by banding together as an informal group, such as bankers, physicians, or building contractors, without having to create a formal political organization. Each conduit registers with the Elections Board and must submit a letter with the group's contribution, detailing every contributor by name and amount donated. Conduit contributions are treated as individual donations and are not considered a separate category.

**Committees.** Wisconsin limits campaign contributions made by political committees. Different limits apply in terms of the amounts a particular type of committee may donate and the amounts a candidate may receive from committees. The three types of committees subject to contribution limits are: 1) the *political action committee (PAC)*, which may be created by but operate separately from a private interest group (such as a corporation or a union) to raise and spend money to elect or defeat particular candidates; 2) the *political party committee*, organized by a formal political party; and 3) the *legislative campaign committees*, organized by the respective political parties in the State Senate or the State Assembly. Any committee that contributes directly to a particular candidate's campaign is subject to specific contribution limits. However, legislative campaign committees and political party committees are allowed to use contributions for party building activities or administrative expenses.

### Wisconsin Contribution Limits by Office

Officer	Individual	PAC Contributions*		All
		Individual	Combined	Committees**
Governor .....	\$10,000	\$43,128	\$485,190	\$700,830
Lt. Governor .....	10,000	12,939	145,564	210,259
Attorney General .....	10,000	21,564	242,595	350,415
Secretary of State .....	10,000	8,625	97,031	140,156
State Treasurer .....	10,000	8,625	97,031	140,156
Superintendent of Public Instruction .....	10,000	8,625	97,031	140,156
Senator .....	1,000	1,000	15,525	22,245
Representative to the Assembly .....	500	500	7,763	11,213
Supreme Court Justice .....	10,000	8,625	97,031	140,156

Note: Contribution limits shown apply to elections in 2000 and 2001.

\*Excluding contributions by political party committees and legislative campaign committees.

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Source: Wisconsin State Elections Board, <http://badger.state.wi.us/agencies/elections>.

## Regulation of Expenditures

***Expenditures by the Candidate.*** Candidates may make campaign expenditures from their own personal funds and the moneys received as contributions from individuals and registered committees, plus any public funding they are awarded. There are no limits on the amount the candidates can spend on their own campaigns provided they do not voluntarily accept public funding. There were attempts at the federal and state level in the early 1970s to limit candidates' personal expenditures, but *Buckley v. Valeo* held that this type of financing was protected by the U.S. Constitution as an exercise of free speech.

***Expenditures by Independent Committees.*** Committees are considered to be making independent expenditures if they do not donate to the candidate's campaign organization and they do not coordinate their efforts with the candidate. Independent committees are permitted to spend unlimited amounts promoting or opposing a candidate, but in Wisconsin they are required to file a statement declaring that the money will be spent without consultation or coordination with the candidate. (If the candidate is knowingly involved in the expenditure, the money is viewed as a contribution, and the contributor must adhere to contribution limits.)

***Expenditures by Political Party Committees.*** In *Colorado Republican Federal Campaign Committee et al. v. Federal Election Commission*, 518 U.S. 604 (1996), the U.S. Supreme Court held that political party committees may make unlimited independent expenditures as long as they are not acting in consultation or coordination with a candidate. Thus, although a candidate has reached the statutory limit on contributions that may be accepted from political parties, these committees can, under certain circumstances, continue spending on his or her behalf on an independent basis.

## Reporting Requirements

***Registration and Reporting.*** Generally, all candidates for state office and political committees that make expenditures expressly supporting or opposing state candidates must register and file campaign finance reports with the state Elections Board. The reports must identify contributors of more than \$20 within a calendar year and give the occupation and principal place of employment of each contributor who donates cumulative contributions of over \$100 in a calendar year. Reports must also itemize all contributions, loans, disbursements, or obligations in excess of \$20. Candidates may appoint a personal campaign committee to handle finances and must designate a campaign treasurer who is responsible for filing the required statements.

***Electronic Filing.*** In an effort to promote prompt and thorough reporting and to make campaign finance information more accessible to the public, 1997 Wisconsin Act 230 required that for reports filed after June 30, 1999, candidates or political committees accepting \$20,000 or more during a campaign period must file their campaign finance reports in electronic form. (To date, the Elections Board has not been able to fully implement a system for accepting electronic reports.)

***Disclosure.*** Candidates and political committees that are subject to state reporting requirements must identify themselves on any mass media communications, such as billboards, handbills, and radio or TV advertisements. This disclosure must contain the words "paid for" followed by the name of the organization responsible for the communication.

## **CURRENT ISSUES**

A variety of issues have become recurring topics in the campaign finance reform debate. Those discussed below were included in bills introduced in the 1997 and 1999 sessions of the Wisconsin Legislature, and it is likely they will be debated by the 2001 Legislature.

### **Contribution and Expenditure Issues**

Since the 1970s, the amount of money individuals or committees may legally contribute to individual candidates or registered political committees has not increased appreciably, and this is becoming a serious handicap. Candidates know that they cannot compete in the increasingly expensive campaign arena without sizeable amounts of money, but the contribution caps, which are not indexed to inflation, make it difficult to acquire the needed dollars.

At the same time, independent spending continues to be an issue for both candidates and voters. In contrast to the many restrictions placed on candidates' spending, organizations making independent expenditures are not subject to limitations. If groups from outside the district, or even outside the state, choose to target a certain race, the candidate has no control over what type of message these organizations send. First Amendment protections make it difficult to restrict this type of financing.

### **Third-Party Transfers; "Soft Money"**

Over the years, candidates and donors have developed a variety of mechanisms for legally circumventing statutory limits on campaign donations. For example, because one PAC can transfer money to another PAC, small PACs may find it advantageous to pool their funds under the umbrella of a "super PAC", which can provide stronger support to their candidate. Pooling undermines disclosure by making it harder to trace the original source of the PAC funding.

Another mechanism is the candidate-to-candidate transfer. A candidate who is running unopposed can still raise funds and then donate the money to a candidate in a hotly contested race.

"Soft money" is a type of transfer that campaign reformers label as a major source of campaign finance abuse. Although corporations and certain other groups may be prohibited under Wisconsin law from contributing to candidates' campaigns, they are permitted under federal election law to make donations to national political parties for general political purposes, such as party building, voter registration drives, and national party conventions. Once the money is collected by the national party it may be transferred to the state party organizations to support party activity, registration and "get out the vote" drives, and "issue ads" which, indirectly aid party candidates. Because soft money is not used to support or oppose a clearly identified candidate, it is not subject to registration and disclosure requirements.

### **Issue Advocacy vs. Express Advocacy**

Although independent expenditures cannot be limited, they may be subject to reporting and disclosure, depending upon whether they are "express advocacy" or "issue advocacy". Expenditures by either individuals or organizations are considered express advocacy if they advocate the election or defeat of a clearly identified candidate. Issue advocacy, most often used on the state level by corporations that are not allowed to make direct contributions to can-

didates' campaigns, is designed to promote a viewpoint, rather than the election or defeat of a candidate. The greatest challenge for the courts and legislatures is to define what constitutes issue or express advocacy. Certain language, such as "vote for", "elect", or "defeat", leaves little doubt that the message calls for express action. On the other hand, there is a large gray area of advocacy, related to attacking or promoting a candidate's voting record, actions, statements, or affiliations, that lacks clear definition. This ambiguity has given outside groups broad latitude and has allowed them to exert tremendous influence on campaigns without the candidate's input.

**WMC Case.** In 1998, the state Elections Board charged that Wisconsin Manufacturers & Commerce (WMC), a private business organization, had violated state election laws by not filing required reports. During the November 1996 election, WMC and certain other unidentified corporations ran a number of ads about six legislators seeking reelection (criticizing five and praising one), although the context did not explicitly advocate voting for or against the incumbents. The Elections Board claimed the ads had involved express advocacy. In *Elections Board v. WMC*, 227 Wis. 2d 650 (1999), the Wisconsin Supreme Court upheld the circuit court's finding that the board's standard for express advocacy was vague at the time of the election and agreed that the board could not adopt criteria after the election to retroactively set a standard. The court declined to provide a definition of express advocacy, saying it was a matter for the legislature and the Elections Board. The resulting ambiguity in the definition of issue advocacy leaves areas within campaign finance practices completely unregulated. Reform supporters have vigorously attacked this exception since the court's decision.

### **Public Access to Campaign Information**

Although the Elections Board provides oversight of campaign financial reporting, its efforts to present campaign information to the public in a useful and timely manner are hampered by the sheer volume of reporting. The mass of data reduces candidate accountability.

One helpful change was the legislature's requirement that, beginning July 1, 1999, all candidates or political committees accepting \$20,000 or more during a campaign period would be required to file their reports in electronic form. This permits computers to be used to file and sort information for easier retrieval and enables the board to make the information available to the public on the Internet, rather than limiting it to those who could come to Madison to view the paper records. Despite the electronic filing requirement, the Elections Board is still swamped with reports in many different formats, and retrieving the reports related to any one candidate may be a long and arduous process. Some outside organizations have produced concise and accessible reports of contribution and expenditure records, but these are private, volunteer efforts. Voters, organizations, and government officials emphasize that public access to information is a major component of clean and fair elections. They advocate prompt and accurate dissemination through official government channels.

### **Public Financing of Campaigns**

Many of the reform platforms being pushed by various organizations at both the state and federal levels recommend effective public financing as a vital element in campaign finance reform. The recommendations in Wisconsin vary, but all agree that the state's current system of public financing has failed to level the campaign playing field. In recent years, the only candidates to take public financing have tended to be incumbents who are running in safe district races.

## CONCLUSION

A common theme among groups calling for action is that campaign finance reform must be comprehensive. It is felt that piecemeal approaches will have only a limited impact and are likely to produce new loopholes. The challenge lies in overcoming conflicting political interests and designing reforms that are both practical and effective.

The current structure of campaign financing creates advantages for incumbents over newcomers, majority party members over minority party members, and wealthy individuals over citizens of average income. Conduits, PACs, and candidate-to-candidate transfers are a concern because they tend to obscure the original source of a candidate's funding. Soft money and independent expenditures may have a similar effect. If disclosure is to be effective in promoting clean and fair elections, it must be possible to trace who is supporting a candidate financially.

Citizens want reform; legislators want reform. The challenge is to agree on a solution acceptable to all. To date, blue ribbon task forces, bipartisan committees, and even a special session of the Wisconsin Legislature in 1998 have not been able to solve the problems, but the issue will not die. Citing broad citizen support, Wisconsin legislators are already taking up reform in the 2001 session.